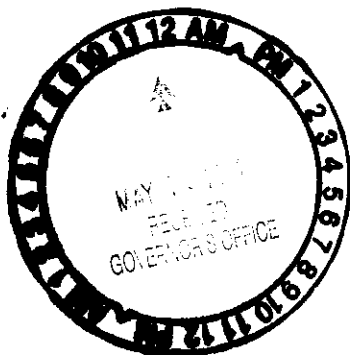


1 SB386  
2 138667-9  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 01-MAR-12

ACT NO. 2012-473



SB386

ENROLLED, An Act,

To amend Sections 12-25-3, 12-25-32, 12-25-34, and 12-25-36, Code of Alabama 1975, relating to the Sentencing Commission; to provide for definitions to provide for membership of the commission; to delay the presentation of truth-in-sentencing standards for legislative consideration; to require the annual report of the commission to be submitted to the Legislature within the first five legislative days of each regular session; to provide that the recommendations for modifications of the sentencing standards for nonviolent offenders be presented in the commission's annual report would become effective unless the Legislature by act rejects the recommended modifications; and to further provide for presumptive sentencing standards for specified offenses with certain exceptions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 12-25-3, 12-25-32, 12-25-34, and 12-25-36, Code of Alabama 1975, are amended to read as follows:

"§12-25-3.

"(a) The commission shall consist of the following voting members:

1           "(1) The Chief Justice of the Supreme Court, or at  
2 his or her designation, a sitting or retired judge, who shall  
3 serve as chair, or at his or her designation another member of  
4 the commission shall serve as chair.

5           "(2) The Governor, or his or her designee.

6           "(3) The Attorney General, or his or her designee.

7           "(4) Three district attorneys appointed by the  
8 President of the Alabama District Attorneys' Association.

9           "(5) Two circuit judges, active or retired,  
10 appointed by the President of the Alabama Association of  
11 Circuit Court Judges.

12           "(6) A district judge, active or retired, appointed  
13 by the President of the Alabama Association of District Court  
14 Judges.

15           "(7) Two victims of a violent felony or persons  
16 whose immediate family member was a victim of a violent  
17 felony, appointed by the Governor.

18           "(8) The Chair of the House Judiciary Committee, or  
19 his or her designee who is a member of the House Judiciary  
20 Committee.

21           "(9) The Chair of the Senate Judiciary Committee, or  
22 his or her designee who is a member of the Senate Judiciary  
23 Committee.

1           "(10) A private attorney specializing in criminal  
2 defense appointed by the President of the Alabama Criminal  
3 Defense Lawyers' Association.

4           "(11) A private attorney specializing in criminal  
5 law appointed by the President of the Alabama Lawyer's  
6 Association.

7           "(12) A county commissioner appointed by the  
8 Governor.

9           "(13) The Commissioner of the Department of  
10 Corrections, or his or her designee.

11           "(14) The Chair of the Alabama Board of Pardons and  
12 Parole, or his or her designee.

13           "(15) A member of the academic community with a  
14 background in criminal justice or corrections policy appointed  
15 by the Chief Justice.

16           "(16) A sheriff appointed by the Sheriff's  
17 Association.

18           "(17) An active police officer appointed by the  
19 Association of Chiefs of Police.

20           "(b) (1) Appointed members of the commission shall  
21 serve terms of four years and may be reappointed for a second  
22 term. Members of the commission who serve because of their  
23 public office or position shall serve only as long as they  
24 hold such office or position.

1           "(2) A member appointed to fill a vacancy on the  
2 commission which occurs before the expiration of the term for  
3 which his or her predecessor was appointed shall serve only  
4 for the remainder of such term.

5           "(3) The membership of the commission shall be  
6 inclusive and reflect the racial, gender, geographic,  
7 urban/rural, and economic diversity of this state.

8           "§12-25-32.

9           "For the purposes of this article, the following  
10 terms have the following meanings:

11           "(1) COMMISSION. The Alabama Sentencing Commission,  
12 established as a state agency under the Supreme Court by this  
13 chapter.

14           "(2) CONTINUUM OF PUNISHMENTS. An array of  
15 punishment options, from probation to incarceration, graduated  
16 in restrictiveness according to the degree of supervision of  
17 the offender including, but not limited to, all of the  
18 following:

19           "a. Active incarceration. A sentence, other than an  
20 intermediate punishment or unsupervised probation, that  
21 requires an offender to serve a sentence of imprisonment. The  
22 term includes time served in a work release program operated  
23 as a custody option by the Alabama Department of Corrections  
24 or in the Supervised Intensive Restitution program of the

1 Department of Corrections pursuant to Article 7, commencing  
2 with Section 15-18-110, of Chapter 18 of Title 15.

3 "b. Intermediate punishment. A sentence that may  
4 include assignment to any community based punishment program  
5 or may include probation with conditions or probation in  
6 conjunction with a period of confinement. Intermediate  
7 punishments include, but are not limited to, all of the  
8 following options:

9 "1. A split sentence pursuant to Section 15-18-8.

10 "2. Assignment to a community punishment and  
11 corrections program pursuant to the Alabama Community  
12 Punishment and Corrections Act or local acts.

13 "3. Assignment to a community based manual labor  
14 work program pursuant to Sections 14-5-30 to 14-5-37,  
15 inclusive.

16 "4. Intensive probation supervision pursuant to  
17 Section 15-22-56.

18 "5. Cognitive and behavioral training.

19 "6. Community service work.

20 "7. County probation.

21 "8. Day fines or means-based fines.

22 "9. Day reporting.

23 "10. Drug or alcohol testing.

24 "11. Drug court programs.

25 "12. Educational programs.

- 1 "13. Electronic monitoring.
- 2 "14. Home confinement or house arrest.
- 3 "15. Ignition interlock.
- 4 "16. Intermittent confinement.
- 5 "17. Jail and prison diversion programs.
- 6 "18. Job readiness and work.
- 7 "19. Literacy and basic learning.
- 8 "20. Pretrial diversion programs.
- 9 "21. Residential drug treatment.
- 10 "22. Residential community based punishment programs
- 11 in which the offender is required to spend at least eight
- 12 hours per day, or overnight, within a facility and is required
- 13 to participate in activities such as counseling, treatment,
- 14 social skills training, or employment training, conducted at
- 15 the residential facility or at another specified location.
- 16 "23. Restorative justice.
- 17 "(i) Victim impact panels.
- 18 "(ii) Voluntary victim offender conferencing.
- 19 "(iii) Voluntary victim offender mediation.
- 20 "24. Self-help groups.
- 21 "25. Sobriety or breath alcohol remote monitoring.
- 22 "26. Substance abuse education and treatment.
- 23 "27. Treatment alternatives to street crime (TASC).
- 24 "28. Voice recognition, curfew restriction, or
- 25 employment monitoring.

1           "29. Work release, other than those work release  
2 programs operated by the Alabama Department of Corrections, as  
3 a custody option.

4           "c. Unsupervised probation. A sentence in a criminal  
5 case that includes a period of probation but does not include  
6 supervision, active incarceration, or an intermediate  
7 punishment.

8           "d. Post-release supervision. A mandatory period of  
9 supervision following sentences of active incarceration as  
10 defined in paragraph a. that may include one or more  
11 intermediate punishment options.

12           "(3) COURT. Unless otherwise stated, a district or  
13 circuit court exercising jurisdiction to sentence felony  
14 offenders.

15           "(4) FELONY OFFENSE. A noncapital felony offense.

16           "(5) INITIAL VOLUNTARY STANDARDS. The voluntary  
17 sentencing standards effective on October 1, 2006. These  
18 standards were based on statewide historic sentences imposed  
19 with normative adjustments designed to reflect current  
20 sentencing policies.

21           "(6) NONVIOLENT OFFENSE. All offenses which are not  
22 violent offenses.

23           "(7) NONVIOLENT OFFENDER. Any offender who does not  
24 qualify as a violent offender pursuant to subdivision (12).



1           "(8) OFFENDER. A person convicted of a noncapital  
2 felony offense.

3           "(9) RELEASE AUTHORITY. Any public official, agency,  
4 or other entity authorized by law to release a sentenced  
5 offender from incarceration or other conditions of a sentence.

6           "(10) RISK ASSESSMENT. An instrument designed to  
7 assess an offender's relative risk for reoffending.

8           "(11) TRUTH-IN-SENTENCING STANDARDS. The sentencing  
9 standards that are scheduled to become effective October 1,  
10 2020. These standards shall be based on statewide historic  
11 time served for offenses with adjustments designed by the  
12 commission to reflect current sentencing policies.

13           "(12) UNDER SUPERVISION. All offenders under the  
14 supervision of any criminal justice agency or program  
15 including, but not limited to, any of the following entities:

16           "a. The Alabama Department of Corrections.

17           "b. State or county probation offices.

18           "c. Community corrections programs pursuant to  
19 Alabama Community Corrections Act.

20           "d. Jails.

21           "e. State or local law enforcement agencies.

22           "f. Any court.

23           "(13) VIOLENT OFFENDER. A violent offender is an  
24 offender who has been convicted of a violent offense, or who  
25 is determined by the trial court judge or a release authority

1 to have demonstrated a propensity for violence, aggression, or  
2 weapons related behavior based on the criminal history or  
3 behavior of the offender while under supervision of any  
4 criminal justice system agency or entity.

5 "(14) VIOLENT OFFENSE.

6 "a. For the purposes of this article, a violent  
7 offense includes each of the following offenses, or any  
8 substantially similar offense to those listed in this  
9 subdivision created after June 20, 2003:

10 "1. Capital murder pursuant to Section 13A-6-2 and  
11 13A-5-40.

12 "2. Murder pursuant to Section 13A-6-2.

13 "3. Manslaughter pursuant to Section 13A-6-3.

14 "4. Criminally negligent homicide pursuant to  
15 Section 13A-6-4.

16 "5. Assault I pursuant to Section 13A-6-20.

17 "6. Assault II pursuant to Section 13A-6-21.

18 "7. Compelling street gang membership pursuant to  
19 Section 13A-6-26.

20 "8. Kidnapping I pursuant to Section 13A-6-43.

21 "9. Kidnapping II pursuant to Section 13A-6-44.

22 "10. Rape I pursuant to Section 13A-6-61.

23 "11. Rape II pursuant to Section 13A-6-62.

24 "12. Sodomy I pursuant to Section 13A-6-63.

25 "13. Sodomy II pursuant to Section 13A-6-64.

- 1           "14. Sexual torture pursuant to Section 13A-6-65.1.
- 2           "15. Sexual abuse I pursuant to Section 13A-6-66.
- 3           "16. Enticing a child to enter a vehicle for immoral
- 4 purposes pursuant to Section 13A-6-69.
- 5           "17. Stalking pursuant to Section 13A-6-90.
- 6           "18. Aggravated stalking pursuant to Section
- 7 13A-6-91.
- 8           "19. Soliciting a child by computer pursuant to
- 9 Section 13A-6-110.
- 10           "20. Domestic violence I pursuant to Section
- 11 13A-6-130.
- 12           "21. Domestic violence II pursuant to Section
- 13 13A-6-131.
- 14           "22. Burglary I pursuant to Section 13A-7-5.
- 15           "23. Burglary II pursuant to Section 13A-7-6.
- 16           "24. Burglary III pursuant to Section 13A-7-7.
- 17           "25. Arson I pursuant to Section 13A-7-41.
- 18           "26. Criminal possession of explosives pursuant to
- 19 Section 13A-7-44.
- 20           "27. Extortion I pursuant to Section 13A-8-14.
- 21           "28. Robbery I pursuant to Section 13A-8-41.
- 22           "29. Robbery II pursuant to Section 13A-8-42.
- 23           "30. Robbery III pursuant to Section 13A-8-43.
- 24           "31. Pharmacy robbery pursuant to Section 13A-8-51.

1           "32. Terrorist threats pursuant to Section  
2 13A-10-15.

3           "33. Escape I pursuant to Section 13A-10-31.

4           "34. Promoting prison contraband I pursuant to  
5 Section 13A-10-36, involving a deadly weapon or dangerous  
6 instrument.

7           "35. Intimidating a witness pursuant to Section  
8 13A-10-123.

9           "36. Intimidating a juror pursuant to Section  
10 13A-10-127.

11          "37. Treason pursuant to Section 13A-11-2.

12          "38. Discharging a weapon into an occupied building,  
13 dwelling, automobile, etc., pursuant to Section 13A-11-61.

14          "39. Promoting prostitution I pursuant to Section  
15 13A-12-111.

16          "40. Production of obscene matter involving a minor  
17 pursuant to Section 13A-12-197.

18          "41. Trafficking pursuant to Section 13A-12-231.

19          "42. Child abuse pursuant to Section 26-15-3.

20          "43. Elder abuse pursuant to Section 38-9-7.

21          "44. Terrorism pursuant to Section 13A-10-152.

22          "45. Hindering prosecution for terrorism pursuant to  
23 Section 13A-10-154.

24          "46. Any substantially similar offense for which an  
25 Alabama offender has been convicted under prior Alabama law or

1 the law of any other state, the District of Columbia, the  
2 United States, or any of the territories of the United States.

3 "b. The basis for defining these offenses as violent  
4 is that each offense meets at least one of the following  
5 criteria:

6 "1. Has as an element, the use, attempted use, or  
7 threatened use of a deadly weapon or dangerous instrument or  
8 physical force against the person of another.

9 "2. Involves a substantial risk of physical injury  
10 against the person of another.

11 "3. Is a nonconsensual sex offense.

12 "4. Is particularly reprehensible.

13 "c. Any attempt, conspiracy, or solicitation to  
14 commit a violent offense shall be considered a violent offense  
15 for the purposes of this article.

16 "d. Any criminal offense which meets the criteria  
17 provided in paragraph b. enacted after 2003.

18 "§12-25-34.

19 "(a) Statewide voluntary sentencing standards shall  
20 be developed and presented to the Legislature in stages over a  
21 three-year period as follows:

22 "(1) By July 31, 2003, the commission shall develop  
23 and distribute to all sentencing judges a reference manual  
24 analyzing historical sentencing practices by duration of  
25 sentence and disposition of felony offenders in Alabama. The

1 reference manual shall indicate those types of offenders  
2 historically most likely to be sentenced to punishments other  
3 than active incarceration where alternatives to active  
4 incarceration are available.

5 "(2) Concurrently with the development and  
6 distribution of the reference manual, the commission shall  
7 develop and begin testing worksheets and voluntary sentencing  
8 standards in selected circuits for selected felony offenses.

9 "(3) The commission shall develop and present the  
10 initial voluntary sentencing standards to the Legislature  
11 before or during the 2006 Regular Session. These standards  
12 shall be introduced in the 2006 Regular Session and shall  
13 become effective on October 1 following the 2006 Regular  
14 Session, if approved by an act of the Legislature passed  
15 during that session. The initial voluntary sentencing  
16 standards based on sentences imposed shall apply to  
17 convictions for felony offenses sentenced on or after October  
18 1, 2006, and committed before the effective date of the  
19 voluntary truth-in-sentencing standards.

20 "(4) The commission shall develop and present  
21 truth-in-sentencing standards to the Legislature before or  
22 during the 2020 Regular Session. These standards shall be  
23 introduced in the 2020 Regular Session and shall become  
24 effective on October 1 following the 2020 Regular Session, if  
25 approved by an act of the Legislature. The voluntary

1 truth-in-sentencing standards shall apply only to felony  
2 offenses committed on or after the effective date of these  
3 standards.

4 "(b) Recommended sentence ranges shall be  
5 established by standards that are based on historical  
6 sentencing practices, adjusted to achieve sentencing goals as  
7 established in Rule 26 of the Alabama Rules of Criminal  
8 Procedure, this chapter, and Section 12-25-31.

9 "(c) Voluntary sentencing standards shall take into  
10 account and include statewide historically based sentence  
11 ranges, including all applicable statutory minimums and  
12 sentence enhancement provisions, including the Habitual Felony  
13 Offender Act, with adjustments made to reflect current  
14 sentencing policies. No additional penalties pursuant to any  
15 sentence enhancement statute shall apply to sentences imposed  
16 based on the voluntary sentencing standards.

17 "(d) Commencing with the 2013 Regular Session, any  
18 modifications to the initial voluntary sentencing standards  
19 made by the commission shall be contained in the annual report  
20 presented to the Governor, the Legislature, the Chief Justice,  
21 and the Attorney General. An annual report containing proposed  
22 modifications shall be presented to the Governor, the  
23 Legislature, the Chief Justice, and the Attorney General at  
24 least forty-five days prior to each regular session of the  
25 Legislature. The modifications presented for nonviolent

1 offenses shall become effective on October 1 following the  
 2 legislative session in which the modifications were presented  
 3 unless rejected by an act of the Legislature enacted by bill  
 4 during the legislative session. The modifications presented  
 5 for violent offenses shall become effective on October 1  
 6 following the legislative session in which the modifications  
 7 were presented, if approved by an act of the Legislature  
 8 enacted by bill during the legislative session in which the  
 9 modifications were presented.

10 "§12-25-36.

11 "This section and Sections 12-25-37 and 12-25-38  
 12 shall apply only after development and legislative approval of  
 13 the proposed truth-in-sentencing standards submitted in 2020.  
 14 When a judge sentences based on the voluntary  
 15 truth-in-sentencing standards, all of the following rules  
 16 shall apply:

17 "(1) Sentences imposed based on voluntary  
 18 truth-in-sentencing standards pursuant to this article shall  
 19 not be subject to any other provision of law concerning the  
 20 duration of sentence.

21 "(2) Sentences imposed based on the voluntary  
 22 truth-in-sentencing standards shall include both a minimum and  
 23 an extended term of sentence including a period of  
 24 post-release supervision. The minimum sentence and the  
 25 extended sentence shall be specified in the judgment of the



1 court for those sentences that are imposed in compliance with  
2 the voluntary truth-in-sentencing standards. Sentence  
3 dispositions may include active incarceration, intermediate  
4 punishment, unsupervised probation, or a minimum punishment as  
5 specified in the voluntary truth-in-sentencing standards.

6 "(3) The minimum term of sentence shall be  
7 consistent with the sentence range recommended in the  
8 voluntary truth-in-sentencing standards for the worksheet  
9 score of an offender. No offender sentenced to incarceration  
10 may be released from incarceration before the expiration date  
11 of the minimum term of sentence.

12 "(4) The extended term of sentence shall be a period  
13 of time equal to 120 percent of the minimum term, rounded to  
14 the next highest month, plus a one-year period of post-release  
15 supervision.

16 "(5) The amount of time an offender shall be  
17 incarcerated on the extended term of sentence shall be  
18 determined by the Department of Corrections pursuant to rules  
19 and regulations established by the Department of Corrections  
20 governing an offender's conduct after conviction and sentence.

21 "(6) No sentence of active incarceration may be  
22 suspended.

23 "(7) For any disposition of sentence less than  
24 active incarceration as defined in paragraph a. of subdivision

1 (2) of Section 12-25-32, the court shall retain jurisdiction  
2 to modify sentence disposition of sentence."

3 Section 2. (a) For the purposes of this section, the  
4 following words shall have the following meanings:

5 (1) AGGRAVATING FACTORS. Substantial and compelling  
6 reasons justifying an exceptional sentence whereby the  
7 sentencing court may impose a departure sentence above the  
8 presumptive sentence recommendation for an offense.

9 Aggravating factors may result in dispositional or sentence  
10 range departures, or both, and shall be stated on the record  
11 by the court.

12 (2) DEPARTURE. A sentence which departs from the  
13 presumptive sentence recommendation for an offender.

14 (3) DISPOSITION. The part of the sentencing courts  
15 presumptive sentence recommendation other than sentence  
16 length.

17 (4) DISPOSITIONAL DEPARTURE. A sentence which  
18 departs from the presumptive sentence recommendation for  
19 disposition of sentence.

20 (5) MITIGATING FACTORS. Substantial and compelling  
21 reasons justifying an exceptional sentence whereby the  
22 sentencing court may impose a departure sentence below the  
23 presumptive sentence recommendation for an offense. Mitigating  
24 factors may result in disposition or sentence range

1 departures, or both, and shall be stated on the record by the  
2 court.

3 (6) NONVIOLENT OFFENSES. As defined in Section  
4 12-25-32, Code of Alabama 1975.

5 (7) PRESUMPTIVE SENTENCE RECOMMENDATION. The  
6 recommended sentence range and disposition provided in the  
7 sentencing standards.

8 (8) SENTENCE RANGE. The sentencing court's  
9 discretionary range of length of sentence as provided and  
10 recommended in the presumptive sentencing recommendation.

11 (9) SENTENCE RANGE DEPARTURE. A sentence which  
12 departs from the presumptive sentence recommendation as to the  
13 sentence range.

14 (10) VIOLENT OFFENSES. As defined in Section  
15 12-25-32, Code of Alabama 1975.

16 (b) The voluntary sentencing standards as provided  
17 for in Section 12-25-34, Code of Alabama 1975, as applied to  
18 nonviolent offenses shall become presumptive sentencing  
19 standards effective October 1, 2013, to the extent the  
20 modification adopted by the Alabama Sentencing Commission  
21 become effective October 1, 2013. The standards shall be  
22 applied by the courts in sentencing subject to departures as  
23 provided herein. To accomplish this purpose as to the existing  
24 initial voluntary sentencing standards, the Alabama Sentencing  
25 Commission shall adopt modifications to the standards,

1 worksheets, and instructions to the extent necessary to  
2 implement this provision including, but not limited to,  
3 defining aggravating and mitigating factors that allow for  
4 departure from the presumptive sentencing recommendations. The  
5 commission's modifications shall be presented to the  
6 Legislature in the commission's annual report within the first  
7 five legislative days of the 2013 Regular Session.

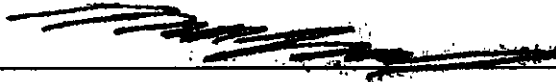
8 (c) Durational and dispositional departures from the  
9 presumptive sentencing standards shall be subject to appellate  
10 review. Along with the modifications provided for in  
11 subsection (b), the Alabama Sentencing Commission shall  
12 recommend a narrowly defined scope of appellate review  
13 applicable to departures from presumptive sentencing  
14 recommendations. The scope of appellate review shall become  
15 effective upon approval by an act of the Legislature enacted  
16 by bill.

17 Section 3. All laws or parts of laws which conflict  
18 with this act are repealed.

19 Section 4. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.

*Kay Ivey*

President and Presiding Officer of the Senate

  
Speaker of the House of Representatives

SB386

Senate 22-MAR-12

I hereby certify that the within Act originated in and passed  
the Senate, as amended.

Patrick Harris  
Secretary

House of Representatives  
Amended and passed 09-MAY-12

Senate concurred in House amendment 09-MAY-12

By: Senator Ward

APPROVED *May 15, 2012*  
TIME *4:35 p.m.*  
*Robert Bentley*  
GOVERNOR

NROR

Ward

SPONSORS

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.

SB 386

years 28 days 1 abstain

PATRICK HARRIS,  
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB \_\_\_\_\_ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,  
Secretary

CONFERENCE COMMITTEE

Senate Conferees

HOUSE ACTION

DATE:

2013

4.3

RD 1 RFD

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on

House Judiciary was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be

Passed w/amend(s) 3 w/sub

This 12 day of April 2012.

Paul DeMarco Chairperson

DATE:

20

RF

RD 2 CAL

DATE:

20

RE-REFERRED

RE-COMMITTED

Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.

SB 386

YEAS 94 NAYS 0

GREG PAPPAS,  
Clerk

HOUSE OF REPRESENTATIVES  
Roll call taken and passed  
Year 1954 No. 6 of 0  
Date 5-11-54  
Signed W. A. Andrews